UNITED STATES DISTRICT COURT.

(EASTERN DISTRICT OF VIRGINIA.)

LEA BROTHERS & CO. v. GEO. M. WEST CO.

January 10, 1899.

1. BANKRUPTCY—*General deed of assignment—Solvency.* A general assignment for the benefit of creditors is an act of bankruptcy, whether the grantor be solvent or insolvent.
2. BANKRUPTCY—*Conflict of State and Federal jurisdiction.* The administration of the effects of a bankrupt rests exclusively in the Federal courts; and where, before adjudication, a State court has taken jurisdiction to administer the assets transferred under a general deed of assignment, the parties will be enjoined from further proceeding in the State court, and plenary jurisdiction will be assumed by the District Court of the United States.

On December 10, 1898, the Geo. M. West Company, a joint stock company, engaged in mercantile pursuits, with its principal office in Richmond, Va., executed a deed of assignment, in pursuance of a resolution passed by the stockholders, at a meeting held by them on that day, conveying to Jos. V. Bidgood, trustee, all of its assets, for the benefit of its creditors, to be distributed amongst them without priority save such as would be entitled to priority under the laws of this State.

The deed was admitted to record on December 12, at 9 o'clock A. M. On the same day, one of the creditors and one of the stockholders, through their counsel, who were also counsel for the West Company, applied to the Law and Equity Court of Richmond for a receiver to take charge of the assets of the company.

The bill of complaint was filed on that day and the object of the suit, as set forth therein, was for the purpose of having a receiver appointed to administer the trust arising under the deed, under the guidance and direction of that court.

By a consent decree, the trustee in the deed of assignment was made the receiver of the court, and directed to take possession of the assets of the company, being required to give bond, etc.

At 4 o'clock P. M. on the same date, the plaintiffs filed a petition in the United States District Court, asking the court to adjudge the company a bankrupt, and administer upon the assets in accordance with the bankrupt law. The ground set forth in the petition being that it was insolvent, and had committed an act of bankruptcy by making a general deed of assignment.

Process issued on the petition in bankruptcy, returnable five days thereafter, and at the expiration of ten days, in accordance with the

bankrupt law, the defendant, on December 27, filed its answer, which answer was to the effect, that the company was solvent at the time of the filing of the petition in bankruptcy, and asked that the petition be dismissed. The petitioners then moved the court to reject the answer, on the ground that such a defence could not be made in the case before the court, as by the filing of the general deed of assignment they were precluded from setting up solvency as a matter of defence; and the petitioners at the same time moved the court to adjudge the company a bankrupt, and to enjoin and restrain the receiver and parties litigant from proceeding with their suit in the Law and Equity Court, or disposing of the proceeds that had been realized from the sale of property pending the election of the trustee in bankruptcy.

Dawson & Seaton, for the petitioners.

Henry & Williams, for the defendant.

WADDILL, District Judge, delivered the opinion of the court.

The pleadings in this case present two questions for the consideration of the court:

First. Whether a general assignment for the benefit of creditors constitutes an act of bankruptcy; and,

Second. If an act of bankruptcy, what effect the action of the State court appointing a receiver to administer the trust under the deed of assignment should have in the administration of the trust estate; that is to say, whether the State or bankrupt court should, after the adjudication of bankruptcy, administer the trust estate.

The present bankrupt law, section 3, specifies five acts of bankruptcy, viz.:

"(1), Conveyed, transferred, concealed or removed, or permitted to be concealed or removed, any part of his property with intent to hinder, delay or defraud his creditors, or any of them; or (2), transferred, while insolvent, any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors; or (3), suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having at least five days before a sale or final disposition of any property affected by such preference vacated or discharged such preference; or (4), made a general assignment for the benefit of his creditors; or (5), admitted in writing his inability to pay his debts, and his willingness to be adjudged a bankrupt on that ground."

And the law particularly provides, in involuntary bankruptcy cases, for contesting the first, second and third grounds of bankruptcy by allowing the bankrupt to disprove his alleged insolvency, and the

burden to prove solvency is placed upon him. No provision seems to be made for contesting the fourth and fifth grounds of bankruptcy, for the manifest reason, it would appear, that the question of insolvency is not one open for dispute where the bankrupt, either in writing admits his inability to pay his debts and consents to be adjudged a bankrupt, or makes a general assignment for the benefit of his creditors. The general assignment itself is inconsistent with solvency, and the answer to the contention that one may assign and still be solvent is that to determine that fact involves the administration of the trust, which the law has chosen to impose upon court of bankruptcy at the instance of creditors, and not upon the bankrupt himself through agencies chosen by him. To allow the bankrupt to make an assignment, and a creditor secured in the assignment, submit the administration of the trust, arising under it, to a State court to defeat the jurisdiction of the bankrupt court would, in effect, destroy the bankrupt law.

Under the law itself, it is quite clear that a general assignment of one's estate and effects to trustees constitutes an act of bankruptcy, and the current of authority, both English and American, is to the same effect.

A general assignment of an insolvent debtor to an assignee or trustee of his own choosing is itself an act of bankruptcy and voidable, because it defeats the rights of creditors to the choice of a trustee, and the trustee, under such assignment, can hold nothing as against the trustee in bankruptcy where proceedings are taken to avoid the assignment.

Under the act of 1867, the Supreme Court of the United States, in *Boese* v. *King*, 108 U. S. 385, in considering this question, said: "It is equally clear, we think, that the assignment by Locke of his entire property to be disposed of as prescribed by the statute of New Jersey, and, therefore, independently of the bankrupt court, constituted itself an act of bankruptcy, for which, upon the petition of a creditor filed within the proper time, Locke could have been adjudged a bankrupt, and the property wrested from his assignee for administration in the bankruptcy court." *In re Burt*, 1 Dill. 439–40, Fed. Cases, No. 2,210; *Hobson* v. *Markson*, Fed. Cases, No. 6,555; *In re Smith*, Fed. Cases, No. 12,974; Black on Bankruptcy, p. 20, and cases there cited; Bump on Bankruptcy (11th ed.), p. 252, and cases there cited.

Coming now to the consideration of what action should be taken by this court, where the State court has entered upon the administration of the trust estate by reason of the general assignment of the bankrupt, while every reasonable effort should be exerted to avoid even an ap-

parent conflict of jurisdiction between State and Federal courts, this case is apparently free from difficulty, as it will not be seriously maintained that the act of bankruptcy itself can be made the basis of dispossessing the bankrupt court of its jurisdiction.

The Constitution of the United States authorizes Congress in its wisdom to enact bankruptcy legislation, and when such action is taken it is the supreme law of the land on the subject.

Under the recent act, the District Courts of the United States alone are made courts of bankruptcy within the States, and are vested with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings.

There are many matters in which the State and Federal courts can proceed in harmony under the bankruptcy act, and which the bankrupt court should leave to the determination of the State court, and as far as possible it will be the policy of this court to do so; but in a case like the present one, I do not see how the two courts can proceed harmoniously. The litigation in each court involves the administration of the entire estate of the bankrupt; one court or the other must proceed. If the assignment is in itself an act of bankruptcy, and the makers thereof have been adjudged bankrupts, then this court has to proceed, and, therefore, must be possessed of the bankrupt's estate, for otherwise the anomalous condition would exist of one court dealing with the bankrupt and his creditors, and another court administering his estate.

The power of the bankrupt court in the premises is plenary, and under section 711, United States Revised Statutes, its jurisdiction in bankruptcy cases is superior to and not concurrent with the State courts. And by section 720, Revised Statutes United States, and section 11 of the bankruptcy law, it is specially authorized to issue injunctions against the parties, and stay proceedings in State courts when necessary for the exercise of its jurisdiction. Indeed, in these cases the question is more one of discretion than jurisdiction. Authorities to support this view are abundant. *In re Clarke*, Blatchf. 372 (Fed. Cases 2,801); *In re Merchants Ins. Co.*, 3 Biss. 162 (Fed. Cases 9,441); *In re Miller*, 6 Biss. 30 (Fed. Cases 9,551); *Watson* v. *Citizens Bank*, 2 Hughes, 200 (Fed. Cases 17,279); *In re Whipple*, 6 Biss. 516 (Fed. Cases 17,511); Black on Bankruptcy, pp. 10, 20; *Ex Parte Christy*, 3 Howard, 292.

My conclusion is that the assignment constitutes an act of bankruptcy, and that the parties should be enjoined from further proceeding in the State court.

As an appeal is desired in this case, a decree may be entered adjudicating the bankruptcy, and enjoining any disposition of the fund in the State court, but under the circumstances of this case the present administration of the estate in the State court will not be interrupted pending the appeal, which can be quickly taken and disposed of.